

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MOUSTAPHA WALKER,

Petitioner,

-against-

JULIE WOLCOTT, Superintendent Orleans
Correctional Facility,

Respondent.

20-CV-7812 (CM)

ORDER OF DISMISSAL

COLLEEN MCMAHON, Chief United States District Judge:

Petitioner, currently incarcerated in Orleans Correctional Facility, filed this petition for a writ of *habeas corpus* under 28 U.S.C. § 2241, challenging his custody. On September 23, 2020, the Court directed Petitioner, within thirty days, to submit a completed request to proceed *in forma pauperis* (IFP) application or pay the \$5.00 fee required to file a *habeas corpus* petition in this Court. In response, on October 6, 2020, Petitioner submitted a letter stating that he forwarded the petition to the wrong court and requesting that the Court transfer this action to the United States District Court for the Western District of New York, or in the alternative, allow him to withdraw the petition.¹ (ECF No. 3.) The Court denies Petitioner's request to transfer this case to the Western District of New York, but grants his request to withdraw this action under Rule 41(a) of the Federal Rules of Civil Procedure.²

¹ Petitioner also asserts that he filed this petition in tandem with his pending *habeas corpus* action under 28 U.S.C. § 2254. See *Walker v. Wolcott*, ECF 1:20-CV-4498, 1 (S.D.N.Y. filed June 11, 2020.) Petitioner further asserts that he paid the filing fee and attaches to his letter a June 30, 2020 receipt for a disbursement request made to his facility. But the receipt appears to be for the filing fee for the § 2254 petition under case number 20-CV-4498, which the Court received on July 2, 2020. This action was filed months later, on September 22, 2020.

² Petitioner may choose to pursue *habeas corpus* relief under § 2241 by filing a petition in the Western District of New York. The Court offers no opinion on Petitioner's grounds for relief.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket. The petition is voluntarily dismissed without prejudice under Fed. R. Civ. P. 41(a). This order closes this case and all other pending matters are terminated.

Because the petition makes no substantial showing of a denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: October 14, 2020
New York, New York



COLLEEN McMAHON
Chief United States District Judge